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CC Docket 96-61

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COMMENTS:

Attn - Patrick Donavan, Deputy Chief, Competitive Pricing Div. - Common Carrier Bureau - FCC

This is a follow up to my discussions with David Nall, Deputy, Tariff Div. several years ago, when I was President of the American Samoa Chamber of Commerce.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr.. Patrick Donavan July 10,1997
Deputy Chief Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Enclosed is a copy of an official Memorandum (Serial No. 28-96) dated November 29, 1995. regarding FCC Rate Integration for the Territory of American Samoa..

The Memorandum is from Aleki Sene, the American Samoa Government Director of Communications (head of all public telephone service for American Samoa) to the Governor of American Samoa.

This is a remarkably candid document.

Here are some excerpts:

"The Communications Act of 1934 clearly states the authority of the FCC on American Samoa. over all interstate and foreign commerce by wire or radio. However,this authority has never been enforced on the Office of Communications (public telephone service) of the American Samoa Government." (p. 1)

"I have always advocated the philosophy of not raising any issue with the FCC, unless we are prepared to cope with the consequences. I knew way back in 1964 that there is no legal basis for the American Samoa Government to handle [long distance telephone] toll service, but in the absence of a bona-fide common carrier, the Government of American Samoa was forced to perform this function for the convenience of the public." [1] (p. 2)

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[1]This Communication Director, Aleki Sene, has been solely in charge of all telephone service since 1962. He has consistently misled the Governors by indicating that the Territorial Government cannot own a common carrier (such as Puerto Rico does). This avoids conveniently the regulation of the FCC on his activity. For the last 35 years he has personally set all telephone charges to the public. There has never been a telephone rate hearing, and no justification for the rates he sets has ever been publicly or internally within the Government.

Aleki Sene has a personal reason for not letting the Government know that they can own a common carrier company. In 1989, Aleki Sene, as Director of Communication, informed the then Governor Coleman, that the government

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"At no time, has the FCC threatened to stop us from doing what a common carrier would normally do. This harmonious relationship between the FCC, Interior and the American Samoa Government has allowed the Office of Communications [a monopoly public telephone service] to grow and prosper as a self designated common carrier." (p. 2)

"The Office of Communications takes in $10,000,000.00 annually.Approximately 75% of this amount is from long distance telephone service. This is the portion that the FCC would regulate under the 1934 Communications Act." (p. 2)

"This revenue from toll service should not be allowed top slip away." (p. 3)

"I believe that the issue here is not how much revenues will be subject to the FCC authority, but that of whether ASG will be allowed to function as a common carrier after the rate integration issue is decided. I honestly feel that ASG will come out the loser by our own doing." (p. 3)

" I do not believe that the FCC would allow U.S. Carriers to compete with the Office of Communications, a non carrier. The reason behind this conclusion is based on my experience with the past and present U.S. Telecommunications

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must give up its contractual option to buy the only satellite earth station in American Samoa which Comsat wanted to sell. MR. Sene informed the Governor that the government could not own a satellite earth station as a government. He declined to tell them that the Government (like Puerto Rico) could form a common carrier company to do so. Acting on this advice the Government gave up the Comsat option to purchase the earth station. Two weeks later, a common carrier company owned by Aleki Sene's wife and children, Samoa Technology., Inc., signed a contract with Comsat to purchase this earth station which they still own and operate as a monopoly today. (cf. FCC Docket ITC-89-123)

Aleki Sene, ASG Director of Communication has a personal interest in the government not forming a common carrier company. The sale of the earth Station to Aleki sene's wife and kids, contains a clause insisted by Comsat that the Government maintains an option to buy the earth station from Samoa Technology, Inc. at book value.

policies and my working relationship with some staff members at the FCC.[2] (p. 3)

"[T]he Government of American Samoa has all the four (4) major carriers, AT&T, MCI, Sprint, and GTE Hawaii as distant correspondents. In other words, they all operate at the other end. There is really no legal basis for this. Instead through tactful negotiations, they agreed to set up shops in American Samoa. Rate integration could change this , if the FCC orders these carriers to implement the rate integration decree. Thus, the obvious loser will be ASG." (p. 3)

"I believe the FCC will ultimately exercise its lawful authority in American Samoa, at some distant point in the future, but until that time comes, let up pay our EOB bond, Retirement loan and ASG subsidy, and take advantage of this very unique opportunity we have." [3] (p. 3)

"I highly recommend that we refrain from participating in the rate integration proceedings before the FCC." (p. 3)

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2 Over the last several years we have tried to determine who these FCC staff members are. We have not been able to find any knowledgeable staff contacts. We believe this is a self serving comment to satisfy a Governor's concern for illegal behavior.

3 "EOB" refers to a government bond issue for an executive office building which houses no communication personnel or activity. The Office of Communications said they would pay the $1.5 million annual bond payment. Samoa Technology, Inc. revenues gathered by Aleki Sene's wife and children from operation of the earth station they opted from the government, is said to be approximately $500,000. If the Government took back the earth station thru a common carrier company, its revenues would be increased by that amount.

The government borrowed some money from the Government Employees Retirement Fund to pay general bills. Aleki Sene is also Chairman of this Retirement Fund. As Director of Communication, he also promised the Office of Communication revenues to guarantee this loan.

"ASG subsidy" refers to the government getting cash from the telephone revenues whenever there is a need.

AMERICAN SAMOA GOVERNMENT
PAGO PAGO AMERICAN SAMOA 96799

OFFICE OF COMMUNICATIONS

In reply refer to:
Serial: 28-96
COM: 11
November 29, 1995

To: Governor Lutali

From: Director of Communications

Subject: Rate Integration

Reference: My Memo of November 15, 1996, Serial: 21-96 and Your Memo of November 20, 1995, Serial: 1308

Thank you for your letter of November 20, 1995 on the subject issue. As requested, I am attaching for your review some of the most pertinent documents which I believed are relevant to the subject matter. Please refer to your letter of November 20, 1995 for reference.

Long Distance Rates

Cost Comparison

	American Samoa		Guam	Saipan
	Current	Proposed	Current	Current
Highest Per Minute Rate	$0.90	$0.80	$1.70	$1.85
Lowest Per Minute Rate	$0.70	$0.60	$0.74	$1.25

The huge disparity between our rates and those of Guam and Saipan prompted both island governors to file for relief through rate integration. We propose to reduce our rates further effective January 1, 1996. The reduction is justified through an expected drop of the space segment penalty that we have been paid since 1979. The savings will be in the order of $250,000.00 per year.

Regulations of the Office of Communications

The Communications Act of 1934 clearly states the authority of the FCC on American Samoa over all inter-state and foreign commerce by wire or radio. However, this authority has never been enforced on the Office of Communications of the American Samoa Government. Guam Telephone Authority (GTA) was recently forced by the FCC to file tarrif. See item on FCC Report, June 3, 1992 edition. Also see item on Pacific Magazine, September/October 1992 edition.

The applicability of U.S. Statutory Law and Federal Communications Commission Regulations was reaffirmed by Legal Opinion No. 04-87, June 3, 1987 by former Attorney General Afoa Moega Lutu. Further research on FCC authority over American Samoa was conducted by former Assistant Attorney General Richard D. Lerner in his memo to former Attorney General Tauta1 A.F. Fa'alevao on March 26, 1992. Serial IDM: 044-92.

The research by former Assistant Attorney General Lerner answers some of the questions raised in your letter. It also discusses some potential problems, some of them insurmountable, if any issue of authority is raised with the FCC. I have always advocated the philosophy of not raising any issue with the FCC unless we are prepared to cope with the consequences. I knew way back in 1984 that there is no legal basis for ASG to handle toll service, but in the absence of a bona-fide common carrier, the Government of American Samoa was forced to perform this function for the convenience of the public.

Throughout the years since ASG assumes the role of a common carrier for American Samoa, the FCC has co-operated well with the Interior Department in giving ASG the required radio frequency assignments through IRAC for the operation of our telecommunciations system. At no time, the FCC threatened to stop us from doing what a common carrier would normally do. This harmonious relationship between the FCC, Interior and the American Samoa Government has allowed the Office of Communications to grow and prosperous as a self-designated common carrier.

Over the objection of the IG, the Office of Communications in 1986 requested and received help from the Interior and the FCC to operate a cellular telephone system in American Samoa, which is now becoming an integral part of the American Samoa Telecommunications network. To protect the FCC, a condition was included in our frequency assignments that renewal was contingent upon the availability of commercial enterprise competent to provide commercial service. Needless to say that no commercial license holder has yet to provide service in American Samoa and at the ten cents rate we are charging per minute.

<u>Revenues of the Office of Communications</u>

The Office of Communications takes in $10,000,000.00 annually. Approximately 75% of this amount is from long distance telephone service. This is the portion that the FCC would regulate under the 1934 Communications Act. The remaining 25% or $2.5 million dollars is from local telephone service and is totally controlled by ASG. If the $2.1 million dollars of statutory obligations would have to be paid out of the local service revenues, a severe deficit condition would result thus precluding us to cover our legal debts.

Please call if you should need any furhter clarification on points raised herein.

ALEKI SENE

Attachments:

(1) FCC Report - June 3, 1992
(2) Pacific Magazine - September/October 1992
(3) Legal Opinion No. 04-87 - June 3, 1987
(4) Research by Ass't Attorney General Richard D. Lerner March 25, 1992, Serial ID: 044-92
(5) Sample Cellular Assignment - Interior Aug. 4, 1988
(6) Communications FY 1996 Budget Summary